

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iv
PRELIMINARY STATEMENT	1
FACTS ALLEGED IN THE COMPLAINT	5
A. Background.....	5
B. Allegations About HAMAS And Interpal	6
C. Allegations About NatWest	9
ARGUMENT	10
 POINT I	
PLAINTIFFS HAVE NOT STATED A CLAIM AGAINST NATWEST UNDER SECTION 2339B (SECOND CLAIM FOR RELIEF) OR 2339C (THIRD CLAIM FOR RELIEF)	10
A. The Statutory Framework	12
B. The Complaint Does Not Plead Facts Sufficient To Establish That NatWest Knowingly Provided Material Support Or Resources To A Foreign Terrorist Organization Under Section 2339B	13
1. The Complaint Does Not Plead Adequate Facts Concerning The Requisite FTO Designation Under Section 2339B	14
2. The Complaint Does Not Adequately Plead That NatWest's Actions Constituted Material Support Under Section 2339B	15
3. The Complaint Does Not Adequately Plead The Requisite Knowledge And Intent Under Section 2339B	17

	<u>Page</u>
4. The Provisions Of Section 2339B Specifically Addressing Financial Institutions Further Establish That Plaintiffs Cannot Allege That NatWest Provided Material Support Under Section 2339B	19
5. The Complaint Fails To Plead Any Facts To Support The Exercise Of Extraterritorial Jurisdiction Under Section 2339B	20
 C. The Complaint Does Not Plead Facts Sufficient To Establish That NatWest Provided Or Collected Funds In Violation Of Section 2339C	20
1. The Complaint Does Not Adequately Plead That NatWest Committed The Requisite <i>Actus Reus</i> Under Section 2339C	21
2. The Complaint Does Not Adequately Allege That NatWest Possessed The Requisite <i>Mens Rea</i> Under Section 2339C	24
 POINT II	
PLAINTIFFS CANNOT IMPOSE GENERAL AIDING AND ABETTING LIABILITY ON NATWEST	27
 A. Secondary Liability Should Not Be Implied At All Under Section 2333(a)	28
B. When Congress Intended To Create Liability For Secondary Actors Under Section 2333(a), It Did So <u>Expressly</u> In Section 2339B And Section 2339C	31
C. If There Is General Secondary Liability Under Section 2333(a), The Pleaded Facts Must Satisfy Criminal Aiding And Abetting Standards Under 18 U.S.C. § 2, As They Indisputably Do Not Here	32
D. Alternatively, The Pleaded Facts Must Satisfy Aiding And Abetting Standards Under The Restatement (Second) Of Torts § 876(b), Which They Also Fail To Do	33

	<u>Page</u>
1. The Complaint Does Not Allege Facts Sufficient To Establish That NatWest Had Actual Knowledge Of The Alleged Terrorist Activities	34
2. The Complaint Does Not Allege Facts Sufficient To Establish That NatWest Provided Substantial Assistance Or Encouragement To The Alleged Terrorist Activities	36
 POINT III	
PLAINTIFFS HAVE NOT PLEADED FACTS SUFFICIENT TO ESTABLISH THE REQUISITE PROXIMATE CASUAL LINK BETWEEN NATWEST'S ALLEGED CONDUCT AND ANY INJURY PLAINTIFFS SUSTAINED	38
 POINT IV	
PRINCIPLES OF INTERNATIONAL COMITY LEND FURTHER SUPPORT TO DISMISSAL OF PLAINTIFFS' COMPLAINT.....	42
CONCLUSION.....	45

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Statutes</u>	
8 U.S.C. § 1189.....	14
15 U.S.C. § 15(a)	40
18 U.S.C. § 2.....	32
18 U.S.C. § 1964(c)	30
18 U.S.C. § 2331.....	32
18 U.S.C. § 2331(1).....	12-13
18 U.S.C. § 2333(a)	12, 32, 39
18 U.S.C. § 2339A(b)	16
18 U.S.C. § 2339B	14
18 U.S.C. § 2339B(a)(1).....	13
18 U.S.C. § 2339B(a)(2).....	19
18 U.S.C. § 2339B(b)	19
18 U.S.C. § 2339B(d)(1)(E).....	20
18 U.S.C. § 2339B(g)(4).....	16
18 U.S.C. § 2339B(g)(6).....	14
18 U.S.C. § 2339C	23
18 U.S.C. § 2339C(a)(1).....	20, 24
18 U.S.C. § 2339C(e)(4).....	31
18 U.S.C. § 2339C (e)(5).....	31

	<u>Page(s)</u>
Cases	
<u>Armstrong v. McAlpin</u> , 699 F.2d 79 (2d Cir. 1983), <u>abrogation recognized on other grounds</u> , <u>Rabin v. Fivzar Assocs.</u> , 801 F. Supp. 1045 (S.D.N.Y. 1992)	34, 37, 38
<u>Billy Baxter, Inc. v. Coca-Cola Co.</u> , 431 F.2d 183 (2d Cir. 1970).....	40
<u>Bloor v. Carro, Spanbock, Londin, Rodman & Fass</u> , 754 F.2d 57 (2d Cir. 1985).....	38
<u>Boim v. Quranic Literacy Inst. & Holy Land Found. for Relief & Dev.</u> , 291 F.3d 1000 (7th Cir. 2002)	<u>passim</u>
<u>Broder v. Cablevision Sys. Corp.</u> , 418 F.3d 187 (2d Cir. 2005).....	11
<u>Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.</u> , 511 U.S. 164 (1994).....	3, 28, 29, 31
<u>Cohen v. Standard Bank Inv. Corp. (Jersey) Ltd.</u> , No. 97 Civ. 3802 (SAS), 1998 WL 782024 (S.D.N.Y. Nov. 6, 1998)	36
<u>Cortec Indus., Inc. v. Sum Holding L.P.</u> , 949 F.2d 42 (2d Cir. 1991), <u>cert. denied</u> , 503 U.S. 960 (1992)	11
<u>Dep't of Econ. Dev. v. Arthur Anderson & Co.</u> , 924 F. Supp. 449 (S.D.N.Y. 1996).....	28-29, 30, 31
<u>Dickens v. Chem. Bank</u> , 573 F. Supp. 1129 (S.D.N.Y. 1983).....	34, 36, 37, 38
<u>Dillon v. Militano</u> , 731 F. Supp. 634 (S.D.N.Y. 1990).....	11, 34, 38
<u>Edwards & Hanly v. Wells Fargo Secs., Clearance Corp.</u> , 602 F.2d 478 (2d Cir. 1979), <u>cert. denied</u> , 444 U.S. 1045 (1980)	34, 36, 37, 38
<u>First Nationwide Bank v. Gelt Funding Corp.</u> , 27 F.3d 763 (2d Cir. 1994), <u>cert. denied</u> , 513 U.S. 1079 (1995)	10-11, 40-42
<u>Fundacion Museo de Arte Contemporaneo de Caracas – Sofia Imber v. CBI-TDB Union Bancaire Privee</u> , 996 F. Supp. 277 (S.D.N.Y.), <u>aff'd</u> , 160 F.3d 146 (2d Cir. 1998).....	34

	<u>Page(s)</u>
<u>Goldfine v. Sichenzia</u> , 118 F. Supp. 2d 392 (S.D.N.Y. 2000).....	29, 30
<u>Halberstam v. Welch</u> , 705 F.2d 472 (D.C. Cir. 1983)	35
<u>Hayden v. Paul, Weiss, Rifkind, Wharton & Garrison</u> , 955 F. Supp. 248 (S.D.N.Y. 1997).....	30
<u>Hecht v. Commerce Clearing House</u> , 897 F.2d 21 (2d Cir. 1990).....	40
<u>Hilton v. Guyot</u> , 159 U.S. 113 (1895).....	42
<u>Holmes v. Secs. Investor Prot.</u> , 503 U.S. 258 (1992).....	39, 40, 41
<u>Humanitarian Law Project v. Gonzales</u> , 380 F. Supp. 2d 1134 (C.D. Cal. 2005)	18
<u>IIT, An Int'l Inv. Trust v. Cornfeld</u> , 619 F.2d 909 (2d Cir. 1980).....	34, 36
<u>In re Gas Reclamation, Inc. Secs. Litig.</u> , 663 F. Supp. 1123 (S.D.N.Y. 1987).....	40
<u>In re Terrorist Attacks on Sept. 11, 2001</u> , 349 F. Supp. 2d 765 (S.D.N.Y.), <u>on reconsideration in part</u> , 392 F. Supp. 2d 539 (S.D.N.Y. 2005).....	<u>passim</u>
<u>In re Terrorist Attacks on Sept. 11, 2001</u> , 392 F. Supp. 2d 539 (S.D.N.Y. 2005).....	28
<u>Kidder Peabody & Co. v. Unigestion Int'l, Ltd.</u> , 903 F. Supp. 479 (S.D.N.Y. 1995).....	29
<u>Kolbeck v. LIT. Am., Inc.</u> , 939 F. Supp. 240 (S.D.N.Y. 1996), <u>aff'd</u> , 152 F.3d 918 (2d Cir. 1998).....	34
<u>Laro, Inc. v. Chase Manhattan Bank (Nat'l Ass'n)</u> , 866 F. Supp. 132 (S.D.N.Y. 1994), <u>aff'd</u> , 60 F.3d 810 (2d Cir. 1995).....	35
<u>LaSalle Nat'l Bank v. Duff & Phelps Credit Rating Co.</u> , 951 F. Supp. 1071 (S.D.N.Y. 1996).....	30

	<u>Page(s)</u>
<u>Lerner v. Fleet Bank, N.A.,</u> 318 F.3d 113 (2d Cir.), <u>cert. denied</u> , 540 U.S. 1012 (2003)	39-40
<u>Linde v. Arab Bank, PLC,</u> 353 F. Supp. 2d 327 (E.D.N.Y. 2004)	32
<u>Linde v. Arab Bank, PLC,</u> 384 F. Supp. 2d 571 (E.D.N.Y. 2005)	<u>passim</u>
<u>Mackey v. Lanier Collection Agency & Serv., Inc.,</u> 486 U.S. 825 (1988).....	32
<u>MCI Telecomm. Corp. v. Graphnet, Inc.,</u> 881 F. Supp. 126 (D.N.J. 1995)	31
<u>Nat'l Council of Resistance of Iran v. Dep't of State,</u> 373 F.3d 152 (D.C. Cir. 2004)	15
<u>Nat'l Labor Relations Bd. v. E.C. Atkins & Co.,</u> 331 U.S. 398 (1947).....	11
<u>Nigerian Nat'l Petroleum Corp. v. Citibank, N.A.,</u> No. 98 CIV. 4960 (MBM), 1999 WL 558141 (S.D.N.Y. July 30, 1999).....	37
<u>Nye & Nissen v. United States,</u> 336 U.S. 613 (1949).....	33
<u>Pennsylvania Ass'n of Edwards Heirs v. Rightenour,</u> 235 F.3d 839 (3d Cir. 2000), <u>cert. denied</u> , 534 U.S. 816 (2001)	28, 30
<u>Renner v. Chase Manhattan Bank,</u> No. 98 Civ. 926 (CSH), 1999 WL 47239 (S.D.N.Y. Feb. 3, 1999).....	34, 36
<u>Renner v. Chase Manhattan Bank,</u> No. 98 CIV. 926 (CSH), 2000 WL 781081 (S.D.N.Y. June 16, 2000)	37
<u>Rolo v. City Investing Co. Liquidating Trust,</u> 155 F.3d 644 (3d Cir. 1998), <u>abrogation on other grounds recognized by</u> <u>Forbes v. Eagleton</u> , 228 F.3d 471 (3d Cir. 2000)	30
<u>Ross v. Bolton,</u> 639 F. Supp. 323 (S.D.N.Y. 1986).....	34, 37
<u>Rosenheck v. Rieber,</u> 932 F. Supp. 626 (S.D.N.Y. 1996).....	30

	<u>Page(s)</u>
<u>Ryan, PRD, Corp. v. Hunton & Williams,</u> No. 99-CV-5938 (JG), 2000 WL 1375265 (E.D.N.Y. Sept. 20, 2000)	35, 37
<u>Tempel v. United States,</u> 248 U.S. 121 (1918).....	11
<u>Tzaras v. Evergreen Int'l Spot Trading, Inc.,</u> No. 01 Civ. 10726 (LAP), 2003 WL 470611 (S.D.N.Y. Feb. 25, 2003).....	36
<u>United States v. Al-Arian,</u> 308 F. Supp. 2d 1322 (M.D. Fla.), <u>modification denied by</u> , 329 F. Supp. 2d 1294 (M.D. Fla. 2004).....	18
<u>United States v. Dauray,</u> 215 F.3d 257 (2d Cir. 2000).....	21, 22
<u>United States v. Friedman,</u> 300 F.3d 111 (2d Cir. 2002), <u>cert. denied</u> , 538 U.S. 981 (2003)	33
<u>United States v. Khan,</u> 309 F. Supp. 2d 789 (E.D. Va. 2004)	14
<u>United States v. Local 560 of the Int'l Bd. of Teamsters, Chauffeurs, Warehousemen, & Helpers of Am.,</u> 780 F.2d 267 (3d Cir. 1985), <u>cert. denied</u> , 476 U.S. 1140 (1986)	32-33
<u>United States v. Local 1804-1 Int'l Longshoremen's Ass'n,</u> 812 F. Supp. 1303 (S.D.N.Y. 1993).....	32
<u>United States v. Medina,</u> 32 F.3d 40 (2d Cir. 1994)	33
<u>United States v. Samaria,</u> 239 F.3d 228 (2d Cir. 2001).....	33
<u>United States v. Sattar,</u> 314 F. Supp. 2d 279 (S.D.N.Y. 2004).....	18
<u>Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler,</u> 537 U.S. 371 (2003).....	22
<u>Williams v. Bank Leumi Trust Co. of N.Y.,</u> No. 96 CIV. 6695 (LMM), 1997 WL 289865 (S.D.N.Y. May 30, 1997)	34-35, 36

	<u>Page(s)</u>
<u>Other Authorities</u>	
147 Cong. Rec. E2397 (daily ed. Dec. 19, 2001)	23
H.R. Rep. No. 107-307 (2001).....	23
<u>Implementation of the International Convention for the Suppression of</u> <u>Terrorist Bombings and the International Convention for the Suppression</u> <u>of the Financing of Terrorism: Hearing on H.R. 3275 Before the</u> <u>Subcomm. on Crime of the H. Comm. on the Judiciary, 107th Cong. 10 (2001)</u>	<u>23-24</u>
Restatement (Second) of Torts § 876(b) (1979)	33-24
Merriam-Webster OnLine, http://www.m-w.com , last visited Nov. 28, 2005	22, 23